

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 BLUE MOUNTAIN BIODIVERSITY)
4 PROJECT, an Oregon non-profit)
corporation,)

5 Plaintiff,)

6 v.)

7 SHANE JEFFRIES, et al.,)

8 Defendants.)
9

Case No. 2:20-cv-02158-MO

September 29, 2021

Portland, Oregon

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15 **Oral Argument**

16 TRANSCRIPT OF PROCEEDINGS

17 BEFORE THE HONORABLE MICHAEL W. MOSMAN

18 UNITED STATES DISTRICT COURT JUDGE
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APPEARANCES

FOR THE PLAINTIFF: Mr. Thomas C. Buchele
Ms. Bridgett Buss
Earthrise Law Center
10015 S.W. Terwilliger Blvd.
Portland, OR 97219

Mr. Jesse Buss
Attorney at Law
411 5th Street
Oregon City, OR 97045

FOR THE DEFENDANT: Mr. Sean C. Duffy
U.S. Department of Justice
Environmental & Natural Resources Div.
150 M Street NE
Washington, DC 20002

ALSO PRESENT: Ms. Claire Deuter
Ms. Rebecca Harrison
Ms. Beth Peer

COURT REPORTER: Bonita J. Shumway, CSR, RMR, CRR
United States District Courthouse
1000 S.W. Third Ave., Room 301
Portland, OR 97204
(503) 326-8188

(P R O C E E D I N G S)

(September 29, 2021; 1:38 p.m.)

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THE COURTROOM DEPUTY: Your Honor, this is the time and place set for oral argument in Case No. 2:20-cv-2158-MO, Blue Mountain Biodiversity Project versus Jeffries, et al.

Counsel, can you introduce yourself for the record.

MR. BUCHELE: Good afternoon, Your Honor. Tom Buchele from Earthrise Law Center for the plaintiff. I'm joined by --

THE COURT: I'm going to ask to pause you there. Go ahead and take a seat, because I'll hear you better if you're seated. I know that goes against all your training.

MR. BUCHELE: It does, Your Honor. Thank you.

Tom Buchele with the Earthrise Law Center for the Blue Mountain Biodiversity Project. I'm joined by our legal fellow, Bridgett Buss, and one of our students, Claire Deuter, and my co-counsel, Jesse Buss.

THE COURT: Who will be arguing today?

MR. BUCHELE: Mr. Buss and I will both be arguing.

THE COURT: All right. Thank you.

MR. DUFFY: Good afternoon, Your Honor. Sean Duffy for the Department of Justice. I'm joined today with Rebecca Harrison, who is an attorney with the U.S. Department of Agriculture, and Beth Peer, who is an environmental coordinator

1 with the Forest Service.

2 THE COURT: Are you going to be handling the
3 argument?

4 MR. DUFFY: Yes, I will.

5 THE COURT: Thank you.

6 I'd like to fairly narrowly limit argument here.
7 We're here both on a motion to compel that amounts to also an
8 objection to Judge Sullivan's F&R on this subject, and a motion
9 for preliminary injunction.

10 I agree with Judge Sullivan on the motion to compel,
11 including both the documents themselves and the privilege log,
12 and I am going to adopt her reasoning and deny the motion to
13 compel here, which means I'm also not going to consider
14 documents that are embodied in the request. I don't need to
15 hear further argument on it.

16 So I want to consider then the motion for preliminary
17 injunction. And there are a number of theories for getting at
18 different claims for preliminary injunction, and I'm going to
19 analyze them under the general test that the parties have
20 agreed on and that are fairly well settled in cases like this,
21 and I'm going to focus really on success on the merits only.

22 In my view of the factors I have to consider,
23 plaintiffs have established a very solid case for irreparable
24 harm, and the government's argument to the contrary I find
25 unpersuasive. I don't accept the idea out of I think the

1 Northern District of California or elsewhere that something
2 about the physical character of the forest can reduce the harm,
3 instead find that whether it's a recent burn or old growth or
4 whatever it may be, those are all areas susceptible to
5 irreparable harm. And then once you get past that sort of
6 analytic obstacle, plaintiffs have a compelling showing here of
7 irreparable harm.

8 The same, I think, goes for the balance of hardships.
9 And that's, of course, pretty common in a case like this. The
10 hardships here favor plaintiff. You have a loss of these trees
11 that is, if not permanently irreplaceable, at least for
12 multiple generations, swept away if plaintiffs lose, and for
13 the government here, modest harm. So in terms of the competing
14 harms, I think that favors plaintiff.

15 The public interest is always hard to figure out,
16 since you can state a public interest in both directions, but
17 certainly there is a public interest in plaintiff's case here
18 that I think any statement one might make of the competing
19 public interests slightly favors plaintiff.

20 I will say on balance of hardships that since I'm
21 about to turn to tentative thoughts on likelihood of success,
22 that the balance of hardships, in my view, tips sharply in
23 plaintiff's favor in this case.

24 So there are only two theories that I think are worth
25 discussion on likelihood of success on the merits. The first

1 is Claim 1, Count 5, in which the Blue Mountain Biodiversity
2 Project's argument is that the project is significant under
3 NEPA and requires an EIS, which was not done. And this is
4 really -- I want to focus on context, not intensity. I think
5 context is really the most important piece of this whole thing.
6 And we have the sort of thing that is not uncommon in a case
7 like this, in terms of the scale of focus that the parties are
8 engaging in.

9 So Blue Mountain Biodiversity Project wants to focus
10 on the Walton Lake recreation area, or at least something close
11 to that, only a couple hundred acres, and the Forest Service
12 wants to focus on the Ochoco National Forest as a whole, which
13 is something in excess of, I think, 800,000 acres, if I can
14 find it here. 845,498 acres.

15 So those are obviously, you know, a world apart in
16 scope. I'll hear from the parties -- I'm not ruling today,
17 it's just my tentative view that while I'm not sure that the
18 proper context or scope to look at is the Walton Lake
19 recreation area, I am persuaded that the entire Ochoco National
20 Forest is taking the lens out too broadly and creating an
21 artificially large context that artificially deflates
22 substantial -- or significant impact.

23 I also am going to discuss Claim 1, Count 4, but
24 let's do these one at a time. And so since it's plaintiff's
25 motion, I'll start with you on anything you might want to add

1 on the prong of likelihood of success on the merits, and
2 focusing only on context on Claim 1, Count 5.

3 MR. BUCHELE: Certainly, Your Honor.

4 The CEQ regulation at issue here, 1508.27(a), I think
5 is quite clear on this, that it might be permissible to look at
6 more than one context, but in the situation where you've got a
7 site-specific project like this, you must look at the context
8 in the locale. That's the language that they use, that the
9 regulation uses, and I think it would be -- the Forest Service
10 just didn't do that, if you consider the Walton Lake recreation
11 area to be the locale, which I think is the most logical
12 reading of the regulation. There is just nothing in the Forest
13 Service's FONSI that ever does that, looks at significance in
14 the context of the 218-acre Walton Lake recreation area.

15 And all they do is they say the impacts are small or
16 insignificant, whether you compare them to the forest or all of
17 the developed recreation areas in the forest, which are
18 scattered over that forest. And there is no attempt made to
19 ever look at the context in the locale. And I think that is
20 the clear legal error here, that you could, under the reading
21 of 1508.27(a), look at all three of those areas, but the most
22 important of the three, when you're talking about a
23 site-specific project, is the context in the locale. And the
24 impacts in the locale for Walton Lake are certainly
25 significant, and I would say dramatic.

1 THE COURT: Isn't it almost always going to be the
2 case if you -- if this context you're examining to determine
3 significant impact is essentially the site of the project, then
4 wouldn't you almost always have significant impact in the site
5 of the project?

6 MR. BUCHELE: Actually, no, Your Honor. I think
7 that's actually not the case. I think -- I do a lot of timber
8 sale litigation. Often the project area for the timber sale
9 would be -- for example, I think in one case I'm working on
10 right now is almost 30,000 acres is the project area, but the
11 actual logging is 1200 acres. So the context is the
12 30,000 acres, the watershed, typically, and there you would
13 have, I think, a much harder argument that the impacts are
14 significant.

15 THE COURT: In this case, if you made the context the
16 Walton Lake recreation area, then it's almost tautological,
17 isn't it, that you'd have significant impact?

18 MR. BUCHELE: I would agree with that, Your Honor,
19 because when you're talking about logging of 170-some acres out
20 of the 218, and I think as we indicated in our brief, I think
21 18 of those acres are the lake, so we're talking about almost
22 90 percent of the forested area is going to be impacted and
23 35 acres are going to be devastated for at least ten years,
24 essentially a clearcut, including more than 25 percent of the
25 visual influence area.

1 So -- and in addition to that, it's not just the
2 acreage, it's four plan amendments, which is unprecedented.
3 And that indicates that they are deviating from their
4 management plan significantly. And that I also think supports
5 significance, the fact that they've had to do four separate
6 plan amendments to do this project on this small area. So it's
7 not just the volume and amount of the logging or the type of
8 logging, it's also the deviation from the plan and what the
9 plan says is supposed to be done here. I think those things
10 together really indicate significance.

11 THE COURT: Thank you very much.

12 Your response?

13 MR. DUFFY: Thank you, Your Honor.

14 The CEQ regulations, taking a step back, they govern
15 when the Forest Service is analyzing the project, and it has to
16 do an environmental impact statement because there's
17 significant impacts. And they do, they require to look at
18 context and intensity. And I agree that in the finding of no
19 significant impact, the discussion of context here is quite
20 broad.

21 But taking a look at the bigger picture here, in the
22 EA, the Forest Service analyzed impacts on a number of
23 different resources for each of the different proposals. And
24 by necessity, in looking at those impacts, it was looking
25 locally for many of those. For example, on the vegetation in

1 the area, on soils, on aquatic species, each one of these --
2 each one of these analyses for these resources is going to have
3 a different scope, depending on the resource itself. For
4 species, it might be quite broad. It could be within the
5 watershed for some resources.

6 But I guess my point is that this finding of no
7 significant impact, though it does speak in very broad terms
8 about the small scope of this project within the broader
9 context of the forest, it's backed up by a significant
10 environmental analysis that looked -- that looked specifically
11 at this project in a localized sort of way.

12 THE COURT: Thank you very much.

13 Let's turn to Claim 1, Count 4. Here plaintiff's
14 argument is that the -- this ongoing contract violates NEPA as
15 an irretrievable commitment, the idea being, I guess, that if
16 the Forest Service is irretrievably committed to one course of
17 action, that it's not meaningfully considering alternatives.
18 Those are sort of fake considerations of alternatives.

19 And so that irretrievable commitment has, in the case
20 law, I think, most frequently occurred by an actual irrevocable
21 commitment of natural resources, making anything else, as I
22 said, sort of a chimerical consideration of alternatives.

23 Here, if I have plaintiff's argument right, you want
24 me to consider sort of irretrievable dedication of financial
25 resources as an irretrievable commitment, the idea being that

1 if the Forest Service here has either dedicated or will lose
2 money if any other plan is explored -- or rather is
3 implemented, that it won't meaningfully explore any other
4 alternative. It will go with the only one that allows it to
5 either make or keep its money instead of losing money. And in
6 terms of measuring the amount of money that might make that
7 meaningful, I think plaintiff suggests that the plaintiff -- or
8 the Ninth Circuit has suggested -- not held but suggested that
9 one way to think about that is if there's not enough money left
10 over if the Forest Service loses the money dedicated to the
11 current plan to do anything else, to start over and put in
12 place another plan.

13 That's how I understand the -- plaintiff's
14 irretrievable commitment argument under NEPA. Do I have that
15 about right or do you need to amplify it a little?

16 MR. BUSS: I believe you have it right, Your Honor.
17 The one thing I would clarify is it doesn't need to be a
18 100 percent absolute committed funding for natural resources.
19 All there has to be is a thumb on the scale that influences and
20 prejudices the choices of the reasonable range of alternatives.
21 So it doesn't have to be something that the Forest Service
22 can't take back.

23 THE COURT: The way the Ninth Circuit has described
24 it, it would have to be a pretty big thumb, right? It can't
25 just be any amount of money. They suggest, at least, it has to

1 be an amount of money that makes actually backing up and
2 implementing a different plan unlikely because there isn't the
3 money to do it left over.

4 MR. BUSS: Well, Your Honor, what constitutes a lot
5 of money is very subjective, depending on the project. And
6 here we're talking about, yes, a relatively small geographic
7 area, and a total budget for this is about \$78,000 that the
8 Forest Service has said it's going to spend by awarding that
9 contract to T2, but then there's this additional \$36,000 in
10 timber value, which is mostly from Units 2 through 4 from the
11 large old trees. So we're talking about a total value here of
12 about \$114,000, give or take. And in the grand scheme of
13 things, that's not a lot of money compared to some cases. We
14 cited the *National Wildlife Foundation* case that Judge Simon
15 decided a few years ago that involved at least a few million
16 dollars, but we were talking about capital improvements to
17 dams, the four lower Snake River dams in that case. So the
18 scale of the project there was much larger, four dams spanning
19 the Columbia River. Here we only have a few-hundred-acre
20 parcel. But \$114,000 is a lot for that parcel, and I suggest
21 to the Court that it shouldn't be determinative how much money
22 there is, but rather context dependent whether that has put a
23 thumb on the scale and prejudiced the alternatives.

24 And here, as we said in the briefing, this is a
25 use-it-or-lose-it scenario. The Forest Service's contracting

1 officer Mark Phillips said -- and I quote from AR 7897 -- "If
2 the treatment prescription changes drastically or wood product
3 values continue to decline, that contract awarded years ago
4 will be terminated without performance and we will lose those
5 appropriated dollars and likely not have the funds to compete
6 and complete a new project."

7 He went on to say that "Already having an awarded
8 contract and not having the funds is the second part of the
9 scenario that doesn't meet the good news category that I would
10 prefer not to share with a potentially less-than-understanding
11 public."

12 And it may be helpful, Your Honor, yes, the Ninth
13 Circuit has largely talked about this issue of limiting the
14 choice of reasonable alternatives under 40 C.F.R. 1506.1, but
15 as Judge Simon recently pointed out in that *National Wildlife*
16 *Federation* case, you also have 40 C.F.R. 1502.2(f), which is a
17 lesser burden on plaintiffs. You only have to show the
18 prejudicing selection of alternatives.

19 And we have a fairly lengthy block quote in our reply
20 on this issue that we think accurately summarizes the law.
21 There's never been a Ninth Circuit case that says you have to
22 completely go all in before NEPA is complete, before you can
23 irretrievably commit resources. *Metcalf* itself was applying
24 the standard of when you needed to prepare an EIS, at what
25 point have you passed -- have you gone too far. But there's

1 never been a standard saying that there has to be no escape for
2 the Forest Service, Your Honor.

3 THE COURT: Thank you very much.

4 Go ahead, sir.

5 MR. DUFFY: Thank you, Your Honor. A couple of
6 things.

7 So this is a stewardship project that's in place,
8 \$78,000 of appropriated funds. That's money that gets paid out
9 to the contract partner because they're doing, in addition to
10 hauling away timber that has value, they're also doing work and
11 hauling leavings of no value. This contract in no way
12 prejudices the Forest Service's decision. There's absolutely
13 nothing on the record that suggests that.

14 THE COURT: What's the status of payment there? This
15 is a contract that was awarded for services rendered. The
16 contracting -- the independent contractor was supposed to get
17 \$78,000.

18 MR. DUFFY: Right.

19 THE COURT: Has that person already been paid that
20 money?

21 MR. DUFFY: No, they have not. And, in fact, as we
22 speak, that contract is being modified, and that's because from
23 the time it was awarded, the Forest Service has always retained
24 the authority to cancel the contract or to modify it, and
25 they're exercising that authority now.

1 THE COURT: So in your understanding, based on the
2 record I have in front of me, not what's happened recently,
3 what happens if this contract is significantly altered?

4 MR. DUFFY: So if the contract was significantly
5 altered in a way that was going to cost the Forest Service
6 more, they would have to seek additional funds.

7 THE COURT: I'm trying to go with the wording used in
8 the email, and it says, "if the treatment prescription changes
9 drastically." I can't do much about wood product value, but
10 what does that mean, "if the treatment prescription changes
11 drastically"? Do you know?

12 MR. DUFFY: I really don't. That's one person's
13 thoughts in an email. I don't know precisely what they had in
14 mind when they wrote that.

15 THE COURT: The concept -- backing up a little bit,
16 the concept of irretrievable commitment is, of course, that in
17 some way your analysis of alternatives is affected by losses
18 you might incur or trouble you might get in, like if you
19 actually committed to someone that they can extract natural
20 resources and then you have to back up on that, you'd probably
21 be out money for that or something. That's the general idea,
22 that the thumb on the scale is that one alternative is much
23 more attractive than the others because the others are going to
24 cost the Forest Service in some way.

25 Is that the case here? Are the other alternatives

1 going to cost the Forest Service something significant if
2 you're required to take -- to consider and maybe even engage in
3 a different alternative? Is that consideration of an
4 alternative affected by the fact that anything other than Plan
5 A is going to cost you money?

6 MR. DUFFY: Well, I don't believe that -- I don't
7 believe that that consideration -- there's any evidence that
8 that was a consideration in this case. There's a couple of
9 things I can imagine, based on my experience in other cases,
10 where I've seen the Forest Service go through this contracting
11 process. Yes, they would have to modify the contract if they
12 were going to do something that was different than what they
13 were planning back in 2015, and what I'm telling you today is
14 they are modifying the contract because there is something
15 different. They could cancel the contract and find a new
16 contracting partner. There's just any number of scenarios. I
17 just -- I just cannot believe that \$78,000 is a significant
18 enough sum that it would change the Forest Service's
19 consideration of the alternatives.

20 THE COURT: I suppose there is an amount so small
21 that the Forest Service just doesn't really care very much, but
22 wouldn't you agree generally with the proposition that it's not
23 an abstract dollar amount I should look at, it's the dollar
24 amount as it relates to the project? So if the Forest Service
25 has a small project that's going to cost them \$100,000, and

1 Plan A will only cost them \$100,000, and Plans B, C, and D will
2 result in them having to spend \$200,000, none of that is, you
3 know, a gigantic amount of money, certainly nothing Congress is
4 going to care about this week, I'm sure, and --

5 MR. DUFFY: That has nothing to do with that
6 analysis, however.

7 THE COURT: I guess what I'm suggesting is isn't the
8 amount of money that might represent an irretrievable
9 commitment linked to some degree to the size of the project?
10 There may be a de minimus amount that's just too small to care
11 about, and you can't imagine the Forest Service would have its
12 decision making influenced by it, but I don't think we could
13 say there's like a floor of \$25 million, and anything below
14 that cannot possibly represent an irretrievable commitment.
15 Wouldn't you agree with that?

16 MR. DUFFY: I don't think there's a floor -- so yes,
17 I agree with that, but I think there's a bigger issue here, and
18 that is that this contract has nothing to do with that
19 analysis. With the Forest Service's four alternatives in front
20 of it, it doesn't necessary need a contract in place. They
21 could cancel it and get a new contract. There's always going
22 to be one choice that's going to cost more than another choice,
23 but that's true of every single decision they make, whether
24 there's a contract in place or one that may be contemplated in
25 the future.

1 THE COURT: I think the idea of irretrievable
2 commitment is, in part, not that one alternative costs more or
3 gains the Forest Service less in fees or something, but that
4 one represents a sort of a sunk cost and the others don't. Is
5 that in play here?

6 MR. DUFFY: I think that's part of it. If there
7 was -- it's hard to get to the question of irretrievable here
8 because the Forest Service had no commitment under this
9 contract to even go through with it.

10 THE COURT: That's your most fundamental position,
11 then, is that there's really nothing that's a sunk cost in this
12 case?

13 MR. DUFFY: Correct.

14 THE COURT: That at any point the Forest Service can
15 just back off, do something different, and the most you might
16 say is that the next person to show up might, you know, require
17 more money to do the services you want?

18 MR. DUFFY: Yeah, that's correct.

19 THE COURT: All right. Thank you.

20 Do you wish to reply to that at all?

21 MR. BUSS: Thank you, Your Honor, yes.

22 It bears emphasizing that without this contract, the
23 Forest Service cannot implement the Walton Lake project. They
24 only got one bid last time. There's a reason they're holding
25 on to it and have been holding on to it for five years, and

1 that reason is clearly expressed in the record by the actual
2 contracting officer, Mark Phillips, and he's the one in the
3 record that explains what will happen if this project gets
4 substantially modified.

5 We would object to the new evidence that's not in the
6 record that was just presented by counsel for the Forest
7 Service, saying that the contract is being modified and saying
8 what might happen next. We know --

9 THE COURT: How do I know on this record that this is
10 their only chance to do the Walton Lake project, this contract?
11 If they don't make this one work, they can't do the project.
12 How do I know that?

13 MR. BUSS: Well, Your Honor, I -- first of all I
14 didn't say that. They may be able to find a workaround, but
15 what we know is that the funding they have and that they're
16 afraid of losing is tied to this contract, which is absolutely
17 tied to cutting those 35 acres of 60-inch firs in Units 2
18 through 4. It may be they could come up with alternative
19 arrangements, but the standard is not whether they could come
20 up with some other arrangement and find a different way to pay
21 for something. As the briefing shows, the record is replete
22 with examples of how the Forest Service has been committed to
23 this project, has been committed to this particular alternative
24 for five years. We don't need to go --

25 THE COURT: I guess there are two things that don't,

1 I think, show irretrievable commitment. One is the Forest
2 Service's commitment to a particular plan over time, since it
3 can just as easily be that they are committed to the plan they
4 like. And it would be an odd way to prove irretrievable
5 commitment. And the second is that they have chosen a plan
6 that rejects some more expensive option. It can't be the case
7 that you aren't meaningfully considering an alternative if the
8 alternative is more expensive than the plan you choose. That's
9 not what irretrievable commitment means, right?

10 MR. DUFFY: Your Honor, in other contexts, yes, it
11 would not come down to which is the least expensive, but in
12 this case, the Forest Service has hitched -- they've hitched
13 their buggy to that horse, which is this contract. So if they
14 had backed away from the 2016 contract --

15 THE COURT: What does the Forest Service lose if it's
16 forced to consider other alternatives and then pick one?

17 MR. BUSS: I'm sorry, Your Honor, I don't understand
18 the question.

19 THE COURT: Well, irretrievable commitment is either
20 about money that you must pay out or money you -- well, for
21 your purposes, money -- money that you must pay out that you
22 wouldn't have to pay out if you got to stick with your original
23 plan or money that you lose that you wouldn't lose if you got
24 to stick with your original plan. That's the theory of
25 irretrievable commitment, right, when you're talking about

1 money?

2 MR. BUSS: It's not so much what they would lose,
3 Your Honor, it's what they fear they might lose.

4 THE COURT: Understood. So what is it that's on the
5 table as money that might be lost if they can't stick with
6 their original plan?

7 MR. BUSS: Well, it's not so much money that would be
8 lost, Your Honor -- and I'll point out that the record does say
9 they will lose the appropriated dollars if the contract falls
10 through -- but they will lose the opportunity to do this
11 project. So the focus isn't on, well, will the funds be lost.
12 The focus here is on can they do this project at all.

13 THE COURT: I want to be clear about that. Your
14 argument is not that losing appropriated funds represents a way
15 of seeing irretrievable commitment to this plan?

16 MR. BUSS: Your Honor, from plaintiff's perspective,
17 our claims are in no way hitched on the Forest Service's loss
18 of money. They haven't irretrievably committed the money, but
19 they have agreed to this contract for that amount of money, and
20 that contract is the linchpin alternative to the clear-cutting,
21 is the linchpin to making any of this work.

22 THE COURT: Well, I thought I asked you a minute ago
23 whether you were arguing that the Forest Service is committed
24 to this contract because it can't make this project happen any
25 other way. A minute ago I thought you said no, that's not your

1 argument.

2 MR. BUSS: Yes, Your Honor. We're relying on their
3 contracting officer who says they will lose this project if
4 the -- if they lose the contract, they won't be able to fund
5 it. So it's a combination of losing funding and that funding
6 being the entire basis for this project that the Forest Service
7 wants to do.

8 THE COURT: Thank you very much.

9 MR. BUSS: Thank you.

10 THE COURT: I appreciate the careful arguments here.
11 I want to remind you that I'm only making findings that have to
12 do with the injunctive phase. I'm not going to make any
13 findings that rule on the absolute merits of the case.

14 But in my view, on Claim 1, Count 5, plaintiffs have
15 made a case for likelihood of success on the merits, or at a
16 minimum, serious questions going to the merits, and therefore,
17 because I've already ruled on the other prongs of the
18 preliminary injunction hearing or request in plaintiff's favor,
19 I am granting the request for a preliminary injunction.

20 I find no other claim or argument that has a
21 likelihood of success on the merits or serious questions going
22 to the merits, but that's fine. This one will do, and one is
23 enough to get the preliminary injunction.

24 Have the -- has plaintiff submitted a form of
25 injunction already?

1 MR. BUCHELE: We have not, Your Honor. We put
2 language in our motion that was exactly the same language we
3 used back in 2016, and so it would probably be fairly easy to
4 negotiate with the government language for a proposed order.
5 We hope to do that certainly by Monday.

6 THE COURT: Please do that. Please submit a proposed
7 form of order for preliminary injunction by Monday.

8 Anything else from Blue Mountain Biodiversity
9 Project?

10 MR. BUCHELE: No, Your Honor.

11 THE COURT: Anything more from the Forest Service?

12 MR. DUFFY: No, Your Honor.

13 THE COURT: Thank you. We'll be in recess.

14 THE COURTROOM DEPUTY: This court is adjourned.

15 (Proceedings adjourned at 2:11 p.m.)
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--o0o--

I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature or conformed signature is not certified.

/s/Bonita J. Shumway

October 5, 2021

BONITA J. SHUMWAY, CSR, RMR, CRR
Official Court Reporter

DATE

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MR. BUSS: [10] 11/15 12/3 18/20 19/12 20/16 21/1 21/6 21/15 22/1 22/8	30,000 acres [2] 8/10 8/12	affected [2] 15/17 16/4
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